

Basic Principles of Partnership Law in Malaysia

Zuhairah Ariff Abd Ghadas
Halyani Hassan

IIUM PRESS
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA



BASIC PRINCIPLES OF PARTNERSHIP LAW IN MALAYSIA

Edited by:

**ZUHAIRAH ARIFF ABD GHADAS
&
HALYANI HASSAN**

**Ahmad Ibrahim Kulliyyah Of Laws (AIKOL)
International Islamic University Malaysia**



IIUM Press

Published by:

IUM Press
International Islamic University Malaysia

First Edition 2011
©IUM Press, IUM

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without any prior written permission of the publisher.

Perpustakaan Negara Malaysia

Cataloguing-in-Publication Data

Basic Principles of Partnership Law in Malaysia: Zuhairah Ariff Abd Ghadas & Halyani Hassan

ISBN: 978967-418-110-9

Member of Majlis Penerbitan Ilmiah Malaysian - MAPIM
(Malaysian Scholarly Publishing Council)

Printed by

IUM PRINTING SDN. BHD.
No. 1, Jalan Industri Batu Caves 1/3
Taman Perindustrian Batu Caves
Batu Caves Centre Point
68100 Batu Caves
Selangor Darul Ehsan

CONTENTS

<i>Authors' Profile</i>	i
<i>Contents</i>	iii

CHAPTER 1 BUSINESS ORGANIZATIONS IN MALAYSIA *Zuhairah Ariff Abdul Ghadas*

INTRODUCTION	1
SOLE PROPRIETORSHIP	1
The advantages of sole proprietorships	3
The disadvantages of sole proprietorships	3
PARTNERSHIPS	4
The advantages of partnerships	6
The disadvantages of partnerships	7
COMPANY	7
Types of Companies	7
Companies Limited by Shares	8
Companies Limited by Guarantee	9
Unlimited Companies	9
Foreign Companies	9
General attributes of companies	9
The advantages of companies	12
Disadvantages	13
CONCLUSION	13

CHAPTER 2

HISTORICAL PERSPECTIVES OF PARTNERSHIPS

Zuhairah Ariff Abdul Ghadas

INTRODUCTION	15
MALAYSIAN PARTNERSHIP LAWS	19
DEVELOPMENT OF PARTNERSHIPS LAW IN MALAYSIA	22

CHAPTER 3

REGISTRATION AND SALIENT FEATURES OF PARTNERSHIPS

Zuhairah Ariff Abdul Ghadas

INTRODUCTION	23
IDENTIFICATION OF INDIVIDUAL PARTNER WITH THE FIRM	23
Unlimited Personal Liability Of Each Other	27
Non-Transferability Of A Partner's Interest	27
Control By All Partners	28
NATURE AND ELEMENTS	30
Carrying On A Business	31
PERSONS CARRYING ON IN COMMON	34
With A View Of Profit	37
FORMALITIES AND REGISTRATION	40
COMPARISON WITH A COMPANY.....	42
Legal Entity	43
Limited Liability	44

CHAPTER 4

LIABILITY OF PARTNERS

Zuhairah Ariff Abdul Ghadas

INTRODUCTION	45
RELATIONSHIP OF PARTNERS WITH THE THIRD PARTIES	46
Limited partnership	59
LIABILITY OF PARTNERS FOR CONTRACTUAL DEBTS OF THE FIRM	60
LIABILITY FOR TORT AND OTHER WRONGS	61

CHAPTER 5

PROTECTION OF THE THIRD PARTIES AND PARTNERSHIP AGREEMENT

Zuhairah Ariff Abdul Ghadas

INTRODUCTION	69
Contractual debts	70
Debts Other Than Contractual	73
RELATIONSHIP BETWEEN PARTNERS	73
FIDUCIARY DUTIES	74
PARTNERSHIP AGREEMENT	78
Management And Control	78
Financial Affairs	79
Change Of Partners	81
Property Of The Firm	82

CHAPTER 6 PARTNERSHIP PROPERTY

Halyani Hassan

INTRODUCTION	85
EXISTENCE OF PARTNERSHIP PROPERTY	86
PROPERTY BROUGHT INTO PARTNERSHIP AS CAPITAL	86
TENANCY AS PARTNERSHIP PROPERTY	87
PROPERTY ACQUIRED AFTER THE FORMATION OF PARTNERSHIP	89
PROCEDURE AGAINST PARTNERSHIP PROPERTY	93

CHAPTER 7 DISSOLUTION OF PARTNERSHIP

Halyani Hassan

INTRODUCTION	95
CONTRACTUAL DISSOLUTION	95
PARTNERSHIP AT WILL	96
NOTICE OF DISSOLUTION	98
DISSOLUTION BY DEATH OR BANKRUPTCY	98
DISSOLUTION BY ILLEGALITY	99
DISSOLUTION BY COURT	100

CHAPTER 8 SHIRKAH

*Halyani Hassan & Mohammad Deen Mohd.
Napiah*

DEFINITION	105
SHIRKAH MUFAWADAH	106

SHIRKAH AL-INAN	106
ELEMENTS OF SHIRKAH	106
Number of person	107
Business	107
Formation	107
VIEW OF PROFIT	108
RIGHTS OF PARTNERS	109
FINANCIAL LIABILITY OF PARTNERS	113
DISSOLUTION OF SHIRKAH	114
RIGHT TO TERMINATE THE CONTRACT	114
CONTRACT FOR A FIXED PERIOD	114
DEATH TERMINATE PARTNERSHIP	115
VITIATION OF THE PARTNERSHIP	115

CHAPTER 9

LIMITED PARTNERSHIP IN MALAYSIA

Zuhairah Ariff Abdul Ghadas

INTRODUCTION	117
LABUAN-THE MALAYSIAN OFFSHORE	117
LABUAN OFFSHORE LIMITED PARTNERSHIPS	118
REGISTRATION	120
TYPE OF PARTNERS	122
LIABILITY OF PARTNERS	124
THE INTERNAL RELATION BETWEEN PARTNERS	125
TAX STATUS	126
DISSOLUTION OF THE LP	126
OBSERVATION	128

CHAPTER 10
LABUAN LIMITED LIABILITY PARTNERSHIP
Zuhairah Ariff Abdul Ghasas

INTRODUCTION	131
LABUAN- THE MALAYSIAN OFFSHORE	132
LIMITED LIABILITY PARTNERSHIPS	133
The Jersey LLPs	134
The Body Corporate LLP	136
LLPs with a partnership status	137
Observation	138
DIFFERENCES BETWEEN L.P AND A LIMITED	
LIABILITY COMPANY	139
DIFFERENCES BETWEEN L.P AND A PARTNERSHIP ...	140
LABUAN LIMITED LIABILITY PARTNERSHIPS (LLP) ...	141
Legal attributes	141
Registration	142
Liability of partners	143
Internal Regulation	144
Dissolution	144
Taxation	145
Application of laws	146
CONCLUSION	146

CHAPTER 10

LABUAN LIMITED LIABILITY PARTNERSHIP

Zuhairah Ariff Abdul Ghadas

INTRODUCTION

In Malaysia, the business vehicles are merely confined to sole proprietorships, partnerships and company. However, It is perceived that a new business vehicle known as Limited Liability Partnership (LLP) is going to be introduced in Malaysia soon as the LLP Bill 2011 has been scheduled for Parliamentary readings in the 2011 session.¹

LLP is a fascinating business vehicle as it is a hybrid of a company and a partnership. Most interestingly, its legal status could be either a legal entity which is not a body corporate or an entity of a body corporate. In the United Kingdom, for example, the offshores' LLPs, such as in the Isle of Jersey's, the LLPs have the status of a legal entity which is not a body corporate whilst in the mainland; the UK LLPs have the status of a body corporate. In the South East Asia region, at present LLPs are only available in Singapore and Labuan, i.e. the Malaysian offshore. Both LLPs have the status of body corporate.

¹ Retrieved from Official Website of the Parliament of Malaysia at <http://www.parlimen.gov.my/index.php?modload=document&uweb=dr&doc=bills&lang=en> on 2 August 2011.